

EXHIBIT 1

Term	Plaintiffs	Defendants
<p>1. decontaminated manure</p> <p>'179: 20 '994: 1, 4, 23 '224: 12, 14</p>	<p>Manure that has been treated to reduce the viable plate count of aerobic and facultative bacteria in the manure to below ten million cfu/gram but is not sterilized.</p> <p>Manure is sterilized if it contains no living microorganisms that can be detected in terms of "total aerobic/facultative viable plate count."</p>	<p>Manure that has been treated to reduce the density of live microbes by a factor of at least 2 logs (100 times), but has not been completely sterilized.</p> <p><i>Further claim construction is required if the manure is derived from broiler chicken litter.</i></p> <p>If the manure is derived from ruminant animals such as cattle and sheep, or from broiler chickens, the manure must be treated to be free from straw or other forms of litter or bedding.</p>
<p>2. raw manure</p> <p>'994: 1, 23</p>	<p>The manure that is treated to make the "decontaminated manure" in the fertilizer composition, before such manure undergoes treatment to reduce its "total aerobic/facultative viable plate count."</p>	<p>Raw manure is fresh manure that has not been decontaminated. Raw manure can have between 1-10 billion live microbes per gram.</p>
<p>3. Wherein the decontaminated manure has a total aerobic/facultative viable plate count reduced by 2-4 logs (100 to 10,000 times) compared to raw manure</p> <p>'994: 1, 23</p>	<p>The "decontaminated manure" in the fertilizer composition has a "total aerobic/facultative viable plate count" that is 2-4 logs less than the "total aerobic/facultative viable plate count" of the "raw manure" used to form the "decontaminated manure."</p>	<p>Many of the claims in the patents set a specific range on the amount microbes that must be destroyed in the manure. In those claims, the density of live microbes is required to be reduced to within the range of 2-4 logs (100 to 10,000 times) as compared to the density in raw manure.</p> <p>This range is what the inventor refers to in the patent as "substantially decontaminated manure".</p>

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<p>4. total aerobic/facultative viable plate count</p> <p>'994: 1, 23</p>	<p>A measurement, expressed in cfu/gram, resulting from counting the total number of colony forming units of both aerobic bacteria and facultative bacteria that have grown on a medium of tryptic soy agar after about 3 days (72 hours) of incubation at 32° C.</p>	<p>Means the number of spores and facultative organisms that are alive</p>
<p>5. decontaminated manure and <i>Bacillus</i> spores wherein the decontaminated manure has a total aerobic/facultative viable plate count reduced by 2-4 logs (100 to 10,000 times) compared to raw manure</p> <p>'994: 1</p>	<p>No construction is required.</p> <p>In the alternative, this term means "decontaminated manure" and "<i>Bacillus</i> spores," present in a fertilizer composition, "wherein the "decontaminated manure" in the fertilizer composition has a "total aerobic/facultative viable plate count" that is 2-4 logs less than the "total aerobic/facultative viable plate count" of the "raw manure" used to form the "decontaminated manure."</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>See Term Nos. 1, 3 and 6 herein.</p>
<p>6. <i>Bacillus</i> spores</p> <p>'179: 20 '994: 1, 4, 5, 7, 23, 27 '224: 12, 14</p>	<p>The <i>Bacillus</i> bacteria present in the fertilizer composition are predominantly in spore form and not vegetative form.</p>	<p>The term "spore" is a common shortened form of the term "endospore", which is a dormant, tough, and temporarily non-reproductive structure produced by certain bacteria, including most of the <i>Bacillus</i> genus.</p> <p>The spore structure becomes important when</p>

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		<p>the bacterium is experiencing a harsh environment, including when the bacterium is getting dried out. Spores enable bacterium to survive through periods of environmental stress. When the environment returns to favorable conditions, the spore can germinate back into a live reproductive state.</p>
<p>7. present in sufficient concentration to effect a viable spore count of between 10⁶ cfu to 10⁹ cfu per gram of dry composition</p> <p>'994: 14, 23</p>	<p>The "<i>Bacillus</i> spores" in a dry fertilizer composition are present in an amount such that a measurement according to the spore count procedure in the patent results in a viable spore count between 10⁶ and 10⁹ colony forming units (cfu) per gram of the dry fertilizer composition. The spore count procedure in the patent includes adding distilled water to a sample of the dry fertilizer composition, heating the sample for 10 minutes at 80° C to kill non-spore forming bacteria and then incubating the sample aerobically for 48 hours to recover only <i>Bacillus</i> spores. <i>Bacillus</i> spore counts are a measurement resulting from counting the total number of colony forming units of the <i>Bacillus</i> bacteria that have grown on a medium of tryptic soy agar after about 3 days (72 hours) of incubation at 32° C. The resulting spore count (in cfu's) is then divided by the weight (in grams) of the original fertilizer sample.</p>	<p>This limitation applies to the concentration of the <i>Bacillus</i> spores when the fertilizer is a dry composition. The fertilizer must include enough spores that are capable of germinating back into <i>Bacillus</i> bacteria to create between 10⁶ to 10⁹ colony forming units per gram of fertilizer. A colony forming unit is a live reproducing bacteria.</p>

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	<p>The term “dry fertilizer composition” means a fertilizer composition formed of solid fertilizer which may also include water moisture of no more than about 20 wt% water.</p>	
<p>12. humic acid</p> <p>‘179: 20 ‘994: 2, 4, 23</p>	<p>A mixture of polymers containing aromatic and heterocyclic structures, carboxyl groups, and nitrogen. Humic acid typically contains the brownish-black pigment melanin, and can be obtained from lignite. It is soluble in bases, but insoluble in mineral acids and alcohols. The term “humic acid” also includes humates, which are humic acid salts. The term “humic acid” does not include humus.</p>	<p>Humic acid is an acid that is naturally produced during the decomposition of organic matter. It is commonly used to promote plant growth.</p> <p>The patent describes humic acid as "a polymeric compound"... "not well defined but a mixture of polymers containing aromatic and heterocyclic structures, carboxyl groups, and nitrogen." "It is soluble in bases, but insoluble in mineral acids and alcohols." That is not a useful definition for claim construction, as it does not simplify any of the terms in a way that is useful to a jury.</p>
<p>13. Additive</p> <p>‘994: 3, 4</p>	<p>Something that has been added to the manure to form the fertilizer.</p>	<p>No construction is needed.</p>

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<p>14. probiotic <i>Bacillus</i> bacteria</p> <p>‘179: 20 ‘994: 7, 27</p>	<p>No construction is required.</p> <p>In the alternative, this term means <i>Bacillus</i> bacteria that are capable of benefitting a plant when introduced to the soil close to the plant.</p> <p>(Defendants contend this term renders the claims indefinite. Plaintiffs contend this term is capable of being construed, and thus the claims are not indefinite)</p>	<p><i>Bacillus</i> bacteria that increase yield or reduce nitrogen requirements of agricultural plants.</p>
<p>15. probiotic <i>Bacillus</i> bacteria capable of enhancing beneficial microbial populations within a rhizosphere of a plant</p> <p>‘994: Claim 7</p>	<p>No construction is required.</p> <p>In the alternative, this term means “probiotic <i>Bacillus</i> bacteria” (defined) that are capable of promoting the growth and reproduction of microorganisms within the “rhizosphere” of a plant, such that the microorganisms benefit the plant.</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>See Term Nos. 14 and 16 herein.</p>

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<p>16. Capable of enhancing beneficial microbial populations</p> <p>'179: 20 '994: 7, 27</p>	<p>No construction is required.</p> <p>In the alternative, this term means capable of promoting the growth and reproduction of microorganisms that benefit a plant.</p> <p>(Defendants contend this term renders the claims indefinite. Plaintiffs contend this term is capable of being construed, and thus the claims are not indefinite)</p>	<p><i>Bacillus</i> bacteria that promote the growth and reproduction of other beneficial microbes in the root zone of a plant.</p>
<p>17. probiotic <i>Bacillus</i> bacteria capable of enhancing beneficial microbial populations within a rhizospherer of a plant</p> <p>'994: 27</p>	<p>This term means “probiotic <i>Bacillus</i> bacteria” (defined) that are capable of promoting the growth and reproduction of microorganisms within the “rhizosphere” of a plant, such that the microbial organisms benefit the plant.</p> <p>Defendants have agreed that the word “rhizospherer” is an obvious misspelling, and means “rhizosphere.”</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>See Term Nos. 14 and 16 herein.</p>

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<p>18. beneficial microbial populations within a rhizosphere of a plant</p> <p>'179: 20</p>	<p>No construction is required.</p> <p>In the alternative, this term means microorganisms within the rhizosphere of a plant that benefit the plant.</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>See Term No. 16 herein.</p>
<p>19. complete fertilizer</p> <p>'179: 21 '994: 24</p>	<p>A fertilizer composition that has at least decontaminated manure, <i>Bacillus</i> spores and N-P-K compounds.</p>	<p>A fertilizer composition that has at least decontaminated manure, <i>Bacillus</i> spores, humic acid, and N-P-K compounds.</p>
<p>20. Yield</p> <p>'224: 12</p>	<p>No construction is required.</p> <p>In the alternative, the term "yield" means the amount of a plant product.</p>	<p>"Increasing" and/or "enhancing" the yield means increasing the amount of food crop harvested per unit area of land. It is not measured on an individual plant.</p>
<p>21. Nitrogen effect</p> <p>'224: 12</p>	<p>The effect of nitrogen either washed out of the soil and into surrounding waters or released from the soil into the atmosphere.</p>	<p>The effect of nitrogen washed out of the soil and into surrounding waters</p>

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<p>22. maintaining contact between the rhizosphere of the plant and the composition for a time sufficient to enhance yield of the plant while reducing nitrogen effect</p> <p>'224: 12</p>	<p>No construction is required.</p> <p>In the alternative, this term means maintaining the fertilizer composition in contact with the rhizosphere of the plant for any amount of time that is enough to increase the "yield" of the plant while reducing its "nitrogen effect."</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>See Term No. 23 herein.</p>
<p>23. a time sufficient to enhance yield of the plant while reducing nitrogen effect</p> <p>'224: 12</p>	<p>No construction is required.</p> <p>In the alternative, this term means any amount of time that is enough to increase the "yield" of the plant while reducing the "nitrogen effect" of the fertilizer composition when compared to the "nitrogen effect" of a non-fertilizer.</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>Applying the fertilizer composition at a time before harvest that is early enough for the fertilizer to cause an increase in the yield. For vegetables and rice, it is from planting to harvest. For other food plants, 30 days from budding to harvest.</p>

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<p>24. sufficient amount of a fertilizer composition</p> <p>'224: 12</p>	<p>No construction is required.</p> <p>In the alternative, this term means any amount of a fertilizer composition that is enough to increase the "yield" of the plant without significantly increasing the "nitrogen effect" of the fertilizer composition when compared to the nitrogen effect of a non-fertilizer.</p>	<p>Means enough fertilizer to cause a measurable increase in plant yield.</p>
<p>25. effective amount</p> <p>'224: 14</p>	<p>Needs no construction.</p> <p>In the alternative, this term means any amount of the fertilizer composition that when introduced to the rhizosphere of a plant contributes to an increase in the concentration of either <i>actinomyces</i> or nitrogen fixing bacteria in the rhizosphere.</p>	<p>Same as sufficient amount (see above)</p>
<p>26. effective amount of a fertilizer composition</p> <p>'224: 14</p>	<p>Needs no construction.</p> <p>In the alternative, this term means any amount of the fertilizer composition that when introduced to the rhizosphere of a plant contributes to an increase in the concentration of either <i>actinomyces</i> or nitrogen fixing bacteria in the rhizosphere.</p>	<p>Means enough fertilizer to cause a measurable increase in plant yield.</p>

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<p>27. time sufficient to increase concentration of non-<i>bacillus</i> beneficial organisms in the rhizosphere</p> <p>'224: 14</p>	<p>This term means any amount of time that is enough for an increase in the concentration of either <i>actinomyces</i> or nitrogen fixing bacteria in the rhizosphere.</p> <p>(Defendants contend this term renders the claim indefinite. Plaintiffs contend this term is capable of being construed, and thus the claim is not indefinite)</p>	<p>Indefinite.</p>